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SUPREME COURT OF THE UNITED STATES.

October Term, 1899.

THE CITY OF NEW ORLEANS, PETITIONER,

versus No. 281

JOHN FISHER, TUTOR, ET AL.

BRIEF ON BEHALF OF JOHN FISHER, ET AIS.

Certiorari to the Circuit Court of Appeals, Fifth Circuit.

Mrs. M. M. Fisher and her husband having sued the Board of School Directors in the State Court of Louisiana, obtained a final judgment against that Board for the sum of $8,097 17-100 with 5 per cent. interest per annum from May 22nd, 1890, payable out of the school tax levied by the City of New Orleans prior to 1879. This judgment was obtained in the year 1890. It was afterwards affirmed by the Supreme Court and is reported in the 44 A. 184. Fisher vs. School Board.

On the 23rd day of February, 1892, Mrs. Fisher and her husband sued the School Board on said judgment, in the Circuit Court of the United States for the Eastern District of Louisiana. R. 48.

This suit was resisted. The School Board on the 5th of March, 1892, under the practice of Louisiana filed an exception to the jurisdiction of the Court. R. 49.

The City of New Orleans also filed an exception to the jurisdiction on the 12th of March, 1892. R. 98.

The matter was submitted to a jury who rendered a verdict in favor of the jurisdiction. R. 51.

The exception of want of jurisdiction was overruled by the Court on the 26th day of March, 1892. R. 51.

The case was then put at issue, was tried on its merits and the jury rendered a verdict in favor of Mrs. M. M. Fisher and her husband. Judgment was accordingly entered on the 19th of May, 1892, for the sum of $8,097 17-100 with 5 per cent. interest from May 22nd, 1890, payable out of the school tax levied by the City of New Orleans prior to 1879. R. 52.

No writ of error was sued out to examine the question of jurisdiction and the judgment was permitted to become final.

The choses in action on which the original suit had been brought in the State Court had been merged in the judgment.

1 La. An. 372 Oakey vs. Murphy; 7 A. 333 Deniston vs. Payne; 12 A. 736; 3 A. 388. 2 N. S. 602; 15 A. 35 Jones vs. Jamison. 120 U. S. 518 Schuler v. Israel.

Black on judgments §674, 677; 11 Fed. Rep. 657; 27 Fed. Rep. 851; 8 Fed. Rep. 303; 14 Fed. Rep. 100-217; 6 Bissell: U. S. vs. Dewey (case 14956, U. S. C. C. reports West Pub. Ed'n.)

Freeman on judgments §221.

6 Wall 231; 17 Wall 545; 21 Wend. 339.

The Circuit Court had jurisdiction to entertain that suit. 93 U. S. 205. Ober vs. Gallagher.

2 Mason 269. Bean vs. Smith (case 1174.)

Black on judgments § § 271-275.

Chief Justice Waite in passing on the question of jurisdiction when a suit is brought on a judgment said: "The note was

no longer in existence as an outstanding liability. It had been merged in the judgment and was as a note, extinguished. Gallagher no longer claims as the assignee of the note, but as the owner of a judgment in his favor against Thompson. He can sue Thompson upon the judgment in the Courts of the United States in Tennessee. As was well said by Mr. Justice Story, in Bean vs. Smith, 2 Mason 269; it is no objection to the jurisdiction that at some anterior period the transaction assumed a shape not within the reach of that jurisdiction. It is sufficient, if it has now become so modified by the act of the parties, or by the principles of law, that jurisdiction now rightfully attaches." Thompson is no longer a debtor by note to Fleming, but by judgment to Gallagher. In the collection of the judgment, Gallagher does not sue or proceed upon the note, and its assignment, but upon the judgment.

"The Court had, therefore, jurisdiction of the suit as originally brought." Having obtained rightful jurisdiction of the parties, and the subject matter of the action, for one purpose, the Court will make its jurisdiction effectual for complete relief. Story's Eq. 64 note K." . 93 U. S. 206. Ober vs. Gallagher. 160 U. S. 645. Gregory vs. Van E. E.

Nearly four years after the rendition of this judgment in favor of Mrs. Fisher and when it had become final and conclusive, Mrs. Fisher and her husband filed their bill against the City of New Orleans and the Board of School Directors. R.1.

The judgment in favor of Mrs. Fisher and against the School Board was rendered on the 19th of May, 1892 (R. 52), and the bill was filed May 11th, 1896. (R. 1.)

The bill avers the recovery of the judgment against the Board of School Directors, that said judgment is final and it is made payable out of the school taxes levied by the City of New Orleans prior to 1879.

That said taxes is a trust fund in the hands of the City of New Orleans, levied by the City of New Orleans, for the purpose of paying the expenses of the public schools.

That the Board of School Directors to whom the City of New Orleans should account, have refused to demand an account of these taxes.

She prayed for an account. R. 1-2 and 3.

The city filed a general demurrer to the bill. R. 5.

The demurrer was overruled. R. 10.

The City of New Orleans filed her answer. R. 11 to 15.

The Board of School Directors also answered. R. 16 to 18.

Among other averments contained in the answer of the Board of School Directors is the following: "That the City of New Orleans has fully, faithfully and promptly accounted for all such appropriations as may have been made by the said city for the benefit of the public schools of New Orleans, or for monies due or taxes levied up to 1879 inclusive, for such purposes and it is not true that this respondent has failed or refused to demand such accounting; that as hereinbefore averred, respondent shows that said accounting was unnecessary, because said city promptly and fully accounted for and paid over to respondent all such appropriations, monies and taxes aforesaid." The Board sets up the prescription or limitation of the action by ten years. R. 17-18.

Therefore it was true as averred by the complainants in their bill, that the School Board refused to demand an account and that complainants were left remediless at law.

The Court referred the matter to Mr. E. D. Saunders as master, who made a report that the city was indebted to the School Board.

The city excepted to the master's report, the exceptions were overruled, and judgment was rendered in accordance therewith in favor of complainant for the amount of school taxes collected and received by the city as trustee.

The city appealed to the Circuit Court of Appeals for the Fifth Circuit and complainant and intervenors took a cross-appeal. The judgment was increased by allowing interest on

the amount received by the city. This Honorable Court granted a writ of certiorari to the City of New Orleans to review the judgment of the Circuit Court of Appeals for the Fifth Circuit, and this is the cause now on trial.

I.

From the foregoing statement it appears that there exists no contest on any question of fact. The master adopted the figures of the city's experts and complainants have acquiesced therein.

As to questions of law; the case is simply one where the City of New Orleans has received for account of the Board of School Directors, during the years 1871 to 1879, the sum of $71,938.78, which she has retained and converted to her own use. R. 27.

Are not complainants entitled to a judgment for this amount with interest from the time of its diversion? To state the proposition is to answer it affirmatively.

II.

We refer your Honors to the acts of the Legislature by virtue of which the City of New Orleans levied and collected the special school taxes which are claimed in this bill. 1871, No. 8, section 7, and 1873, No. 36, section 4.

These acts are printed in full in the addendum.

III.

When this cause had been regulary put at issue, by the filing of the answers and replications the Chancellor ordered the master to "take a full, true, fair and perfect account of all the funds principal and interest received by the City of New Orleans from the school taxes levied in 1871, 1873, 1874, 1875, 1876 1877 and 1878." R. 19.

The master reported that the City had collected up to January 24th, 1881 in principal $23,180.03 and in interest $48,758

75-100 and since January 24th, 1881, up to May 8th, 1897, $799.18, making a total of $71,938 78-100. R. 23 to 29.

The City excepted to the master's report on the sole ground that the interest collected by her did not form part of the school taxes. R. 32.

The exceptions were overruled and the report confirmed. R. 45.

This point is referred to in the seventh assignment of error.

On the question of interest the master said:

"It is a question of law whether the School Board is entitled to any part of the interest. I think it is. The interest, a mere accessory of the principal belongs in my opinion to the same person to whom the principal belongs. Accordingly in my opinion the amount the City of New Orleans now owes to the School Board for taxes collected and for interest on taxes collected, is as above stated, $71,938 78-100." R. 23-24

The Circuit Court of Appeals, Fifth Circuit in passing on this point said: "Under the law the school taxes carried ten per cent interest per annum, from the day they became delinonent. It was a penalty for non-payent of the taxes. This formed no part of the city's proper revenues; the city in collecting the same, was acting as a trustee for the School Board. Delay in payment of taxes operated to the prejudice, not of the city, but of the school fund and its creditors. We are unable to find any authority in law or morals for the city to appropriate to itself this interest. To allow such an appropriation would be to reward the city for its own negligence in the collection of the taxes due the school fund. We fully agree with the master, "that the interest, as a mere accesory of the principal belongs to the same person to whom the principal belongs." R. 158.

The Act of 1871, p. 147, entitled "An Act to amend an Act entitled 'An Act to extend the limits of the Parish of Orleans, etc.,' approved March 16th, 1870, and to prescribe additional regulations for the government of the corporation of the City of

New Orleans," provides, in section 9, transcribed in full in the addendum, "that all taxes imposed by the City of New Orleans, or due to the same and not paid on the 31st day of July of each year, shall be exigible with interest at the rate of ten per cent. per annum from that date," etc., etc.

The collection of the interest was actually made, on the delinquent school taxes, and whether rightfully or wrongfully collected, the amount received should be placed to the credit of the cestui que trust. The city had no interest in said tax and its interest.

There can be no error in this ruling. Legally speaking, this is the only defence properly pleaded in this suit. This point is without merit.

IV.

We will now examine the other defences set up in the answer of the City of New Orleans. R. 11.

First. The city "admits that oratrix recovered judgments against the Board of School Directors, a corporation of the State of Louisiana, and a citizen thereof, both in this Honorable Court, and in the Civil District Court of the Parish of Orleans, as is set forth in oratrix's bill of complaint and records annexed thereto and referred to therein." R. 11.

This admission was sufficient to relieve complainant of the necessity of proving her judgments and their validity.

As long as this admission remained of record the City of New Orleans could not be heard to contradict the judgments.

Second. "Defendant admits that all of said judgments are now final and are payable as decreed and provided for in the said judgments.

This admission strengthens the previous one.

Third. "Defendant denies that the school taxes out of which said judgments have been made payable, is a trust fund levied by the City of New Orleans for the purpose of paying the expenses of the public schools of said city."

The acts of the Legislature of 1871 and 1873 copied in extenso in the addendum, give the direct and explicit contradiction to this averment. The Supreme Court, in the case of Labatt vs. City of New Orleans, said that the city was only a collecting agent. 38 A, 283.

Fourth. "Defendant denies that it has ever failed to collect said taxes punctually, and denies that any of the same remain uncollected, and denies that if any of the same remain uncollected, they so remain by reason of any negligence on the part of this defendant, and denies that defendant is liable at all for the amount of any such taxes yet remaining uncollected, if any such there be."

The answer to this denial is that this decree is merely for taxes which have been collected.

The city's expert found the amount credited on the books of the city and complainants have accepted these figures as correct.

Fifth. "Defendant admits that the City of New Orleans has never paid to the School Board any interest which she may have collected on any back taxes and defendant denies that any such interest, if the same has ever been collected, was due to the School Board and defendant denies that she has ever misapplied or diverted to unlawful uses, any interest that she may have collected from delinquent tax payers, or back taxes, and defendant avers and shows that by express provision of law, all interest which she may collect on any back taxes is especially set aside for certain purposes and cannot by her be used for school purposes or for any other purpose than that commanded by law." R. 12.

The question of the right of the School Board to the interest accrued on delinquent school taxes, has been already discussed under head III of this brief. The creditors of the school fund were the sufferers by the delinquency, and what interest accrued on their claims was supposed to be offset by the interest the taxes carried.

The general averments that the law set aside such interest for certain purposes, have no force in the absence of such law which does not and never did exist.

Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh. The matters contained in these averments have not been called up for trial, and have been reserved for future action. We need not refer to them.

Twelfth. "Defendant denies that it was the duty of the School Board to call this defendant to account and denies that the School Board or the oratrix herein has any cause of action against this defendant for such an account. Defendant denies that there was any privity between the School Board and this defendant or between Mrs. Fisher and this defendant, and further answering, the defendant says that if any such cause of action for an accounting ever did exist in favor of said School Board, or of said oratrix, the same was effective and executory in the year 1880 and became actionable and exigent in the year 1880, and in the years following the year 1873, up to 1879, inclusive. That said action of accounting was personal to said School Board and could only be exercised and availed of by the said School Board, which action is prescribed by the lapse of ten years from and after each of the said years and that oratrix has no right or cause of action in the premises." R. 13.

This defence reduced to its simple expression, is, 1st, that Mrs. Fisher has no right to an accounting for want of privity with the City of New Orleans, and herself, and 2nd, that her action is prescribed by ten years.

1st. The School Board should have brought the action for an accounting, they refused to do it, hence the creditors of the trust fund have the right to avail themselves of the powers of a Court of Equity to reach the funds destined to their payment. The books are full of such cases.

In discussing the rigts of the creditors of the school fund, the Supreme Court of Louisiana, in the case of Labatt vs. City of New Orleans, 38 A., 283, said:

"Hence it is obvious that under the provisions of Act 123 of 1874, as well as under the section of the Act of 1873, just transcribed, the holders of school certificates can look only to the uncollected appropriations of the respective years for which the same have been issued."

In the case of Fisher vs. Board of School Directors, 44 A., 184, the same Court decided that the holders of these school certificates had the right to recover payment out of the school taxes levied prior to 1879.

The judgment which forms the basis of this bill, is "payable out of the school tax levied by the City of New Orleans prior to 1879." R. 52.

A cestui que trust as well as beneficiary of a trust fund can bring a bill for an accounting.

9 Fed. Rep. 793.—20 Fed. Rep. 277—502. 3 Brev. (S. Car.) 47. 30 Ga. 777. 17 Hunn (N. G.) 556. 39 Ala. 726.

Perry on Trust, v. 2, p. 470. 3rd edn. §816, 845, 885.

Spence, v. 1, fo. 364.

Spence, v. 2, p. 32, 33.

5 Peters, 495. Jowles vs. Lawrason.

Story's Eq. Jur. v. 1, sec. 454; v. 2, 648.

Foster's Fed. Practice, 2nd. Edn., p. 662.

2, Brock, 516. 101 U. S. U. S. 601-609.

Grant on Corporations, 138.

2 Dillon, sec. 729. Note.

Tothil, p. 50. Lord Bacon's orders.

1 Schoales & L., 305. 123 Mass. 117.

2 Ves. Jr. 45. 5 Ves. 505.

1 Bli. N. S., 337. Atty. General vs. Corporation of Dublin.

2 Sim. 449. Atty. General vs. Mayor Carlisle.

2 Brown's Practice, 236. Attv. General vs. Coventry.

2 Russ 45. Atty. General vs. Mayor of Exeter.

3 Russ 395. Atty. General vs. Mayor of Exeter.

1 Swanst. 197 et seq.

The Court of Chancery will always lay hold of any breach of trust, in relation of administration of property, let the guilty party of it be either in a public or private capacity. 2 Spence pp. 50-51.

Every cestui que trust is entitled to the aid of a Court of Equity. 3 P. W. 222. Spence v. 2, p. 50. 2 P. W. 595. 2 Keen 134. 68 Ga., 501. 11 Ala., 977. 10 Ga., 273. 131 Ills., 182.

The Constitution of Louisiana of 1879, in the article for the relief of delinquent tax payers, and carried into effect by Act No. 49, of 1880, has made all these school certificates receivable for taxes, and has merged them in one fund. Both are to be found in the addendum.

The record shows that the trustee and cestui que trust, are confederating and combining to defeat complainant, a creditor of the trust fund, and it is to a Court of Equity alone that complainant can apply for relief.

2nd. As regards the plea of prescription of ten years. The School Board and the city have both urged that defence. However the Supreme Court of Louisiana, in the case of Gasquet vs. School Directors, reported in 45 A., 343, said: "We think the pleas of prescription are not well founded. Act 36 of 1873 makes it very clear that the claims evidenced by these certificates were not payable absolutely or at any particular time. They are payable only out of the revenues of the years for which they were issued, and only when said revenues are collected, and in the manner therein provided; and the act further declared that no writ of fi fa, or mandamus shall be issued for seizure of any school monevs or to direct or enforce its payment otherwise than in the manner and sequence required in this act. This law formed part of the contracts out of which the claims arose and deprived the claimants of any legal remedy to enforce payment, except out of particular revenues, when actually collected and covered into the treasury.

"The case is very much stronger and clearer than that of King Bridge Co. vs. Otoe Co., 124 U. S., 459, in which the Supreme Court of the United States held that county warrants, payable only when there are funds in the treasury applicable thereto, are not actionable until the money for its payment is collected and therefore not subject to the statute of limitations, except from the same time."

The judgments sought to be enforced were rendered since 1890, that is, within ten years of their present enforcement, and the school certificates are merged in the judgments.

The cause of action is not prescribed.

The Supreme Court of Louisiana also decided in the case of Mrs. Fisher vs. the Board of Directors of the City Schools, 44 A. 184, copied in R. 93, et seq., that "under Act 49 of 1880, school certificates issued for 1874, 1875 and 1876, were made receivable for any taxes due prior to 1879. This had the effect of creating one fund for school indebtedness prior to said year."

This act also had for effect to recognize the debt of the School Board in so far as it made same payable out of the taxes. But the position of the City of New Orleans was and is that of a trustee, when she receives the trust fund, she is acting for the cestui que trust. She does not hold the funds in her own right.

The Chancery jurisprudence does not recognize any limitation in favor of a trustee. A trustee can never acquire a trust fund.

"The statute of limitations, 21 Jac. 1 c. 16, cannot be pleaded in bar to a trust." 1 Green, N. J. Eq., 280. 3 How. 411. Oliver vs. Piatt. Daniel's Chancery Pleadings and Practice, p. 642.

"As between the trustee and cestui que trust in the case of an express trust, the statute of limitations has no application, and no length of time is a bar. Accounts have been decreed against trustees, extending over periods of thirty, forty and even fifty years. The relations and privity between trustee

and cestui que trust are such that the possession of the one is the possession of the other and there can be no adverse claim or possession during the continuance of the relation." Perry on Trusts, p. 508 to 511.

In support of this equitable doctrine, Mr. Perry has cited nearly three pages of decisions rendered by Chancery Courts.

The same principle was held in Louisiana in relation to corporations declaring dividends. 20 A. 382, St. Romes vs. Levee Steam Cotton Press Co.; 12 R. 536, 30 A. 808.

The citations of authorities to sustain a principle so just, so well recognized and so deeply imbedded in the equitable jurisprudence, leads us to remark that the City of New Orleans, this defaulting trustee, has filled this record, with similar and most inequitable, unjust, illegal and untenable defenses, in the hope that she may escape her just liability.

The double defence contained under this twelfth head should be overruled, first, because a Court of Equity alone can give the relief prayed for; and second, because the action is not barred by the statutes of limitations nor prescribed under the laws of Louisiana.

Thirteenth. "Defendant denies that there is any fund now administered, or which ever was administered by the City of New Orleans, derived either from appropriations, taxes, or money said to be due said School Board, and denies that if there is or was any such fund, that said School Board or oratrix has any rights in the premises." R. 13.

If this allegation be intended as a denial that the City is in possession of the school fund, her answer is untrue. Her own expert has reported against her and the record shows no dispute of facts on this point.

If this allegation be intended to mean that the trust fund being in possession of the City, complainants have no legal right to it, then the proposition of law is as false as the question of fact. We refer to part I of our brief.

Fourteenth. "Defendant admits that the judgment of oratrix are payable as stipulated in said judgments, but denies that oratrix has any equitable lien enforceable against the City of New Orleans, before a Court of Equity by reason thereof."

This is another admission of the validity of the judgments and admissions first and second, coupled with the present one, are conclusive of the validity and finality of said judgments.

The judgment being made payable out of a trust fund authorizes the Court which rendered it to bring the fund in Court and to compel the trustee to account.

Fifteenth. "Defendant denies under the law were the services which she alleges, have been merged in her judgments, ever received by the City of New Orleans directly in payment of the school taxes without the intervention of the Board of School Directors." R. 13.

We are at a loss to understand this ground of defense. Nowhere else in the record is it insisted upon or explained.

Sixteenth, Seventeenth, Eighteenth. The matters alleged under these three heads are not before the Court.

Nineteenth. (a) "Defendant denies that any acts which have been done by her are contrary to equity and defendant denies that the oratrix has any right or reason to invoke the equitable jurisdiction of this Honorable Court.

(b) "Further answering, defendant shows that there does not appear in the bills of complaint of oratrix herein any allegation of any indebtedness by the City of New Orleans to the said School Board and that without having made said allegation oratrix is without right to proceed against this defendant herein.

(c) "Further answering, defendant shows and avers, that it has been decreed in the judgments of oratrix herein sued on, and in other suits of a similar nature, by other parties against the City of New Orleans, that oratrix and such other complainants have no cause of action against the City of New Orleans on account of the claims of the character sued in the judgments hereinbefore referred to." R. 14.

(a) This ground reiterates the defense under No. twelve. An equity court is the only court capable of granting the relief sought.

(b) It is averred in the bill that the City had failed to pay a portion of their collection, the interest, to the School Board, and that the letter refused to demand an account. It was unnecessary to allege more.

(c) What is meant here is that Miss Caroline Labatt had sued the City of New Orleans on the school certificates given to her by the School Board and that the Supreme Court of Louisiana decided in 38 A. 283 that there was no privity of contract between Miss Labatt and the City of New Orleans. Here we are not sueing on any certificate. We have obtained a judgment against the School Board, and we are here excercising the rights which it was the duty of this Board to enforce and which they refuse to do. The cases are very different.

After the filing of the answer, a replication was duly filed and the case put at issue. The matter was referred to a master and the only exception filed to his report was one raising the question of liability of the City for the interest collected by her on delinquent school taxes. We have been thus particular in bringing to the attention of this Court the various defenses set up, for the reason that the assignment of errors are for the most part new issues sought to be raised.

V.

The Question of Jurisdiction.

When the master had made his report, based on the figures of the expert appointed by the City, who had virtually reached the same result as complainants' expert, although these gentlemen had made their examination independently, extending through many books and covering thousands of items, it be-

came evident that the City would be compelled to refund. Then commenced an effort to complicate matters.

The report of the master was made on the 22nd of May, 1897, R. 23. On the 27th of May, five days thereafter, a motion was made by the City's solicitor to make the Board of Liquidation a party to this suit. R. 29.

The Board of Liquidation demurred. R. 33.

The demurrer was sustained. R. 40.

On the 29th of June, 1897, the City filed the following exception: R. 35.

" Now into Court comes the City of New Orleans and excepts to the jurisdiction of the Court ratione materiae et personae.

"Defendant shows that Mrs. M. M. Fisher is a citizen of New Orleans, and of the State of Louisiana.

"That plaintiff's petition contains no averment that the suit could have been maintained by the assignors of the claim sued upon by Mrs. M. M. Fisher in the suit which forms the basis of this action.

"Wherefore, exceptor prays that this exception be maintained and that plaintiff's suit be dismissed at her cots," &c. R. 35.

This paper was filed without leave of Court; it was not in the form of a plea in chancery; and it only attacked the jurisdiction of the court, as to the bill. Even if all the averments of this exception were true, they would not defeat the jurisdiction of the court because this suit was ancillary to the original case, where the judgment was final and conclusive and so admitted by the answer.

On July 1st, 1897, the jurisdictioon of the court was again sought to be raised by a plea made in the form required by the chancery pleadings, "on the ground that complainant Mrs. M. M. Fisher is a citizen of the State of Louisiana, and is residing in the City of New Orleans at No. 2335 Chippewa street; that plaintiff Mrs. M. M. Fisher and defendant are both citizens of the State of Louisiana." R. 36.

This plea does not aver that any fraud had been perpetrated on the jurisdiction of the court, nor does it aver when defendant became aware of the fact alleged nor does it aver that due diligence had been used. The plea was in direct conflict with the previous admission as to the validity and finality of the original judgment.

Under equity rule number 60, "after replication, or setting down for a hearing it, (the answer) shall not be amended in any material matters, as by adding new facts or defenses or qualifying or altering the original statements, except by special leave of the court, or of a judge thereof, upon motion and cause shown, after due notice to the adverse party supported, if required by affidavit."

The equity rule was disregarded.

Besides the plea did not in any manner attack the jurisdiction of the court on the ground that the court could not have rendered a valid judgment in the original suit, but attacks the jurisdiction to maintain this equity proceeding.

On the 11th of December, 1897, a motion was made by the City attorneys to annul the original judgment on the ground that the assignors of the school certificates were citizens of Louisiana and the defendant also, and therefore the Court was without jurisdiction. R. 106.

This issue was made in the original suit. R. 49.

The matter was submitted to a jury. R. 51.

The verdict was in favor of the jurisdiction and the judge overruled the exception. R. 51.

A final judgment was afterwards rendered in favor of Mrs. Fisher and her husband. R. 52.

(a) Final judgments cannot be annulled on a simple motion. A writ of error or a bill of review are the proceedings.

(b) The City of New Orleans was not a party to the original judgment. The Board of School Directors for the City schools were the only defendants, and the only ones condemned to pay.

The VIIth Amendment of the Constitution provides:
suits at Common law, where the value in controversy
ll exceed twenty dollars, the right of trial by jury
ll be preserved, and no fact tried by a jury shall
erwise be re-examined, in any Court of the U.S. than
ording to the rules of the Common law."

Therefore the City of New Orleans showed no interest to obtain a writ of error, nor to file a bill of review.

(c) As long as the original judgment remained in force, the court of chancery was vested with ancillary jurisdiction to enforce the decree.

(d) But even if the City had a right to file a bill of review: it is a condition precedent, in the equity courts that the defendant must first execute the decree before being heard on a bill of review.

(e) But your Honors must have perceived that the judgment was in favor of Mr. Fisher as well as Mrs. Fisher, and in none of the pleas, motions or exceptions is any mention made to contradict the fact that Mr. Fisher was an alien. In fact, under the laws of Louisiana, the choses in action sued upon were presumed to be community property, and the husband as the head and master of the community, had full charge of its management. C. C. 2402-2404. On the other hand, if the property was the paraphernal property of the wife, the same is under the charge of the husband.

C. C. 2385: "The paraphernal property, which is not administered by the wife separately and alone, is considered to be under the management of the husband."

The judgment is that Mrs. M. M. Fisher and her husband M. M. Fisher have judgment, &c. R. 52.

On the 20th of December, 1897, a motion was again made to put at issue the jurisdiction of the court, unaccompanied by any affidavit according to equity rule No. 60, but the Judge refused to permit said motion to be filed. This was strictly in accordance with the rule. R. 107.

This last motion contains a suggestion but no proof that it was since filing the exceptions to the master's report that defendants discovered that plaintiff is not a citizen of Louisiana.

The exceptions were filed June 7th, 1897. R. 32. The motion was made Dec. 20th, 1897.

We call your Honors' attention to the following authorities settling the validity of the original judgment and jurisdiction of the equity court to maintain this bill:

"To this bill the defendant Root demurred for the reason that the court had no jurisdiction, because both complainant and defendant were citizens of the same state." p. 405.

"The bill being ancillary to the original proceeding of Morton against Root and supplementary to the decree rendered therein, can be maintained without reference to the citizenship or residence of the parties. There is consequently no objection that the court below had no jurisdiction in this case because the appellee and the appellant were both citizens of Nebraska. Krippendorf vs. Hyde, 110 U. S. 276; Pacific R. R. vs. Missouri Pacific Railway, 111 U. S. 505;,, 150 U. S. 413. Root vs. Woolworth.

"As to the allegation in the bill that the court was without jurisdiction of the suit brought by Widow Cave, because she alleged falsely therein that she was a citizen of France, when in fact she was a citizen of Louisiana, and thus the court had no jurisdiction of the suit as between her and Marceline Carvailhez, that question cannot be raised and adjudicated in this suit. By the record of the former suit, there appeared to be jurisdiction, and the plaintiff cannot question it by means of this suit, when the question it not raised by Marceline Carvailhez, who was the defendant in the former suit.

"Although the present suit is between two aliens, yet, inasmuch as it is brought in the same circuit court in which the former decree was rendered, and to impeach that decree, we think that the court had jurisdiction." 144 U. S. 126. Lacassagne vs. Chapuis.

"But we do not wish to be understood as holding that, even if jurisdiction had not been apparent upon the record, advantage could be taken of it, after a final decree, and in a collateral proceeding. Thus in Skillern's Executors vs. May's Executors,

6 Cranch 267, a case which had been reversed by this Court and sent back to the Circuit Court, was discovered to be one, not within the jurisdiction of that Court. But as it appeared that the merits had been finally decided in this Court and its mandate required only the execution of the decree, it was held that the Circuit Court was bound to carry the decree into execution, although the jurisdiction of that Court was not alleged in the pleadings. So in McCormick vs. Sullivant, 10 Wheat. 192. A prior judgment between privies in estate was pleaded in bar of the remedy sought to be enforced in the suit, then under consideration, and objection was made that the proceedings did not show that the parties to it were citizens of different states, and consequently, that the Court was without jurisdiction and the decree void. It was held, however, that the Courts of the United States, though of limited, were not of inferior jurisdiction, and that, if jurisdiction were not alleged in the pleadings, their judgments and decrees were erroneous and might be reversed for that cause; but that they were not absolute nullities, and that the decree in the former case, while it remained unreversed, was a valid bar to the suit under consideration. To the same effect are Ex parte Watkins, 3 Peters 193; Kennedy vs. Georgia State Bank, 8 How. 586; Des Moines Navigation Co. vs. Iowa Homestead Co., 123 U. S. 552, and the recent case of Dowell vs. Applegate, 152 U. S. 327.

"These authorities are especially pertinent to this case, in view of the fact that, after removal of the case to the Federal Court, the parties thereto, including the plaintiffs herein, acquiesced in its jurisdiction." * * * 156 U. S. 533. Evers vs. Watson.

If the Federal Court erred in assuming jurisdiction, its final decree, being unmodified and unreversed cannot be treated as a nullity and cannot be assailed collaterally. 152 U. S. 339, Dowell vs. Applegate; 111 U. S. 252, Bors vs. Preston.

"As said in Des Moines Nav. Co. vs. Iowa Homestead Co.,

above cited, if the Circuit Court kept a case when it ought to have been remanded, or if it proceeded to adjudicate upon matters in dispute between two citizens of Iowa, when it ought to have confined itself to those between citizens of Iowa and the citizens of New York, its final decree in the suit could have been reversed, on appeal, as erroneous, but the decree would not have been a nullity." 152 U. S. 340, Dowell vs. Applegate.

"The judgment is conclusive in respect to the parties to it. It cannot be impeached collaterally, and it cannot be questioned upon a creditor's bill. 8 Wall. 373, Mattingly vs. Nye. 160 U. S. 539, Laing vs. Rigney.

The case of Benjamin vs. City of New Orleans, 169 U. S. p. 161, differs from the Fisher case in the fact that complainant based his bill on warrants issued by the Metropolitan Board, not on any judgment against that Board.

The original judgment was therefore rendered by a Court with jurisdiction, because:

1st. The real plaintiff in the suit was Jno. Fisher, whose alien citizenship has never been questioned. The cause of action was either community property or the separate paraphernal property of the wife. In the prior event, the husband, as the head and master of the community, had control thereof; in the latter case, the matter "is considered to be under the management of the husband." C. C. 2385.

The judgment was in his favor. R. 52.

2nd. The city admitted the validity and finality of the judgment, and was afterwards estopped from contesting the same.

3rd. The judgment was not against the City of New Orleans, and the School Board alone could attack it. They have not done so.

4th. The judgment was final and could only be reversed by a writ of error.

5th. The judgment could not be attacked collaterally.

The Court is vested with jurisdiction to entertain this bill.

because the jurisdiction is ancillary to enforce the prior judgment.

VI.

An appeal was taken by the City of New Orleans to the Circuit Court of Appeals. Fourteen assignments of error having been filed, were all passed upon by the Appellate Court. R. 155.

The assignments are substantially as follows:

First. (a) It was error to have allowed to complainant the school taxes of 1871, because her claims did not arise during that year.

(b) The school taxes of 1871 were not claimed in the bill.

1st. These two grounds were not part of the exception to the master's report. The objection comes too late.

2nd. Under article of the Constitution of Louisiana of 1879 for the relief of delinquent tax payers and under act No. 49 of 1880, printed in the addendum, all the school taxes prior to 1879 were consolidated into one fund.

3rd. The Supreme Court of Louisiana decided that the school taxes under the constitution and law above quoted, constituted but one fund. Fisher vs. School Board, 44 A. 184; Gasquet vs. School Board, 45 A. 342; Fisher vs. School Board, 48 A. 1077.

4th. The judgment which was rendered in favor of complainant against the School Board, (R. 52) is made "payable out of the school taxes levied by the City of New Orleans prior to 1879."

5th. The City of New Orleans has no interest to raise this issue. The Supreme Court of Louisiana has decided that the School Board "administer school affairs without any possible control on the part of the city authorities." R. 95. If the city pays she will be discharged. The right of complainant to be paid out of the school taxes of 1871 is res adjudicata.

6th. The allegations of the bill are that "her judgments are made payab.e out of school taxes prior to 1879, and the prayer of the bill is for a full account and for general relief. R. 2, 3. The order of reference specifies the school taxes of 1871. R. 19, 20.

Second. No judgment should have been rendered for the sum of $11933 27-100, discount allowed on taxes.

1st. This question was not raised in the exceptions to the master's report.

2nd. The act of 1874, No. 41, printed in the addendum, which authorizes the city officers to allow a discount on taxes paid in advance contains the following: "Provided no discount be made upon school tax."

Third. That the full amount of money collected for 1874 was turned over to the School Board (see testimony of Clark Steen and his report offered in evidence by complainant); it was error to make the city pay over any more money out of the taxes of 1874, the city having already paid over all that she owes on that year. Such being the case, the amount of $10,816.59 and $209.50, proportion of interest on school taxes for 1873 and the proper proportion of principal for school taxes for 1874 (to ascertain the amount of which a reference to the master's report is necessary), are not due to the School Board. While it is true that all back taxes prior to 1879 are lumped into one fund, we urge that in calling for an accounting, it is sufficient for the city to show, in order to be discharged are far as the taxes of any particular year are concerned, that she has paid over the full amount of taxes due the School Board for that year, and having done this, with the taxes of 1874, it is error for the Court to order her to turn over any more of the taxes for that year.

1st. This matter was not involved in the exceptions to the master's report.

2nd. The city is not in good faith in making this objection. In point of fact, the exception is not true.

The record discloses a detailed statement of the conditions of the school fund from 1873 to 1878, inclusive. R. 53 to 63.

The total result of each of these years is tabulated at p. 54.

The total taxes collected during these years amounted to	$1,554,131.81
The total amount paid out and received in certificates during the same time	$1,547,024.65
Leaving a surplus of	$7,107.16

due by the city to the School Board. R. 71.

This amount is fully explained by Mr. Clark Steen, an expert, thoroughly acquainted with the city treasurer's book and who had made a previous examination under appointment by the Civil District Court of New Orleans.

In this report the school tax of 1873 balances, but the report shows, and Steen testifies, that the treasurer stopped paying on the 2nd of March, 1876. This is also true of 1871. The city's expert, Mr. Aitkins, commenced the taking of the school taxes for 1871 and 1873 only from the 2nd of March, 1876. R. 54-25-27.

For the year 1874 the total tax collected was $302,741.91, and the total paid and certificates received amounted to $315,423.46; accordingly, the city overpaid that year $12,681.55. But in the year 1878 the city received $200,182.82 and paid out only $185,926.15; she had therefore received $14,256.67 more than she paid out, balancing these overpaid and underpaid years, leaves as aforesaid, the city in the debt of the School Board in the sum of $7,107.16. R. 71-54.

Mr. Aitkens, the city's expert, cut this amount to $6,949.44. R. 25.

The difference was trifling, and rather than enter into a dispute of facts, we accepted his figures.

This amount	$6,949.44
The school taxes of 1871, collected from March 2nd, 1876	7,821.17
The school taxes of 1873, collected from March 2nd, 1876	8,409.42
The interest collected and retained by the city	47,959.57
All collecter prior to January 24th, 1881	
And the amount collected since 1881 to May 8, 1897	799.18
Foot up the amount of the decree	$71,938.78

It is not true, therefore, that we charged the city for collections of 1874 more than received.

In passing on this assignment of errors the Court of Appeals said: This assignment raises more matter involved in the master's report, of which no complaint was made in the exceptions filed to the report, and the assignment need only be noticed, because it contained an admission that all the back taxes prior to 1879 were lumped into one fund." R. 156.

Fourth. That complainants have a remedy at law.

We have fully argued the question of the remedy under No. IV, twelfth, No. 1.

We have here to deal with a trust fund, where the cestui que trust, our debtor, refuses to avail himself of the right to demand an account, and our only recourse was to the Equity Court.

"We consider the bill as a creditor's bill to reach equities existing between the School Board and the City of New Orleans, in which an accounting between the two parties is necessary in order to ascertain the indebtedness of the city to the School Board. No such relief can be obtained at law." R. 157.

The Court which rendered the judgment for complainant, "payable out of the school tax levied by the City of New Orleans prior to 1879 had the right to exercise its equitable jurisdiction to bring the fund in Court and make its judgment effective.

Fifth. "Complainant had no right to sue the City of New Orleans, because her judgments are against the School Board only, and she does not allege that the city owes the School Board anything."

The bill sets out various causes of action and averred that the School Board "have refused to demand an account of the school taxes." R. 2.

The Court of Appeals said: "We think the issue of indebtedness of the City of New Orleans to the School Board is sufficiently asserted in the bill and is clearly put at issue in the answer." R. 157.

It is too late to object to the sufficiency of the allegations of the bill, when the indebtedness of the city to the School Board had been proven by her own expert, without any objection.

Sixth. The substance of this assignment is that complainant is estopped because the city was garnisheed under a fi. fa, in suit 12,060, and complainant did not traverse her answer.

The Circuit Court of Appeals answered this objection as follows:

"The proposition enunciated in this assignment of error is that an issuance of execution and garnishment proceedings thereunder operate an estoppel to a creditor's bill founded on the same judgment and seeking an accounting between the judgment debtor and the garnishee. If the general proposition should be conceded its applicability in the present case is not apparent. In our view, the garnishment proceedings shown in this record were against the treasurer of the city and ex-officio treasurer of the School Board—a stakeholder—under which law no accounting as between the City of New Orleans and the

School Board could have been had." Nothing further need be said.

Seventh. "The Court erred in allowing the interest collected. This question has been fully discussed under head III and need not be mentioned again.

Eighth, Ninth. These assignments refer to the refusal of the Chancellor to allow the pleas to the jurisdiction of the Court to be filed.

We have fully discussed the ruling of the Court and shown that defendant did not comply with Equity Rule No. 60.

Besides the Court had ancillary jurisdiction without reference to the citizenship of the parties. See No. V.

The original judgment was final and could not be attacked collaterally, and could not be attacked at all by the City of New Orleans, she not being a party to the suit.

Tenth. The plea of prescription has been fully discussed under No. IV, twelfth, No. 2.

The cause of action against the School Board was not prescribed. 45 A. 342; Gasquet vs. School Directors, and the action of the cestui que trust in the case of an express trust, as the case happens to be, is never prescribed.

Eleventh. This assignment again refers to the jurisdiction.

Twelfth. The city was not a trustee. "The city was collecting the school taxes, for the School Board, and therein acting as agent, and a trust naturally resulted." R. 160.

This was an express trust created by statute.

Thirteenth. This assignment denies the right of the complainant to claim an accounting from the city.

"This objection goes to the right of the complainants to maintain this suit for an accounting which seems to us so plain that no argument is needed to sustain it." R. 160.

Fourteenth. "It was error to order the whole fund paid over to complainant and intervenors.

This suit was brought for the benefit of complainant and

others similarly situated. The City of New Orleans is not interested in the distribution of the fund by the Court. She is interested in obtaining a discharge.

We fear, that the City of New Orleans, this defaulting trustee, is urging this point for no other purpose than worrying the Court and litigant. She has not paid, nor does she contemplate paying one cent.

She tortiously converted the trust fund and she does not intend to refund one cent.

Her solicitude for the equal distribution of the school fund is pure hypocrisy.

She received 69991.99 of school certificates in payment of school taxes, without regard to an equality of distribution and she is very late in asserting her solicitude, to-day.

VII.

On the Question of Interest.

By what law is the Circuit Court of the United States, sitting in Equity in the State of Louisiana, guided?

The Constitution of the United States provides: (Art 111, Sec. 2) "The judicial power shall extend to all cases, in law and "Equity, arising under the Constitution."

In Livingston vs. Story, 9 Peters 654, the Supreme Court of the United States said: "When the Constitution was adopted "and the Courts of the Union organized, and their jurisdiction "distributed, Louisiana formed no part of this Union. It is "not reasonable, therefore, to conclude that any phraseology has "been adopted with a view to the peculiar local system of laws "in that State. She was admitted into the Union in the year "1812; and by Act of Congress, passed for that purpose, 4 Laws "U. S. 402, it is declared that there shall be established a Dis-"trict Court to consist of one Judge, to be called the District "Judge, who shall, in all things, have and exercise the same

"jurisdiction and powers, which, by the Act the title whereof "is in this section, recited, were given to the District Judge of "the Territory of Orleans," * * * "which is, in suits of "Equity, and those of Admiralty and Maritime jurisdiction, "according to the principles, rules and usages which belong to "the Courts of Equity and Courts of Admiralty, respectively, "as contradistinguished from Courts of common law, subject to "such alteration by the Courts as may be thought expedient."

Robinson vs. Campbell, 3 Wheaten 222.

United States vs. Howland, 4 Wheaten 114, and

Parsons vs. Bedford, 3 Peters 444, settled that the absence of Courts of Equity in that State (Louisiana) does not prevent the exercise of equity jurisdiction in the Courts of the United States, according to the doctrine of this Court. In the case of the United States vs. Howland, which arose in Massachusetts, where there are no Equity State Courts, the same doctrine was held. (p. 457.)

In that case, at p. 115, the Court there said: "And as the "Courts of the Union have a Chancery jurisdiction in every "State, and the judiciary act confers the same chancery powers "on all, and gives the same rules of decision, its jurisdiction in "Massachusetts must be the same as in other States."

If, therefore, this Court must decide this controversy according to the rules of decision in the Chancery Courts, we submit that complainant and intervenors are entitled to the interest allowed in the decree, on the strength of the authorities hereinafter submitted:

The Sovereign may be trustee. Vol. 2, Spence, p. 32. 2 Fonblanque 139. 40, note. Lewin, p. 73.

Corporations can be trustees. 2 Spence, p. 32 (bottom). "Where there is any fund created for the purpose of being put to some public use, which fund is vested in a corporation, the Court of Chancery has, by its original inherent jurisdiction, a right to see to the due application of the fund.

"A corporation, public or private, being a trustee, is in this Court, the same as an individual." 2 Spence, Vol. 2, p. 33, citing; Attorney General vs. Governors of Founding Hospital, 2 Vesey, Jr., 45. Mayor of Coventry vs. Attorney General, 7 Bro. P. C. 235.

"It is an imperative duty of an accounting party, whether an "agent, trustee, a receiver or an executor, for this respect, as "was remarked by the Lord Chancellor in Lord Hardwicke vs. "Vernon (14 Vesey 510-11) they all stand in the same situation "to keep his accounts in a regular manner, and to be always "ready with his accounts. Neglect of this duty is a ground for "charging him with interest on the balances in his hands and with "costs. So a trustee and executor is bound to render every nec-"essary information that is required of him; and he, who, under-"taking to give information, gives but half information, in the "view of the Court of Chancery, conceals; if he have not given "all the information necessary, he is bound to seek for it, and, "if practicable, to obtain it.

"The Court does not visit the improper holding of money, "if there is nothing more, further than by charging the execu-"tor with interest; but if his account is falsified, if anything like "fraud appears, then the Court gives costs.

The answer of the City admits that she has kept all the interest collected on the school taxes and that she has used the same for other purposes. (5th clause of the answer.)

The evidence shows that the City retained the principal of the taxes 1871 and 1873, after the 2nd day of March, 1876.

The evidence shows further that when the garnishee answered, there should have been on the books $7107.16 more than the $1,893.00 acknowledged.

Of course, the City stands before this Court in a very unenviable light. She kept part of the trust fund for her own use, she falsified the account, and now that the facts are clearly proven she still resists by technicalities their just payment. Un-

der the strict rules of Chancery more than simple interest is allowable.

We now quote from Daniel's Chancery Pleadings and Practice, p. 1369:

"It seems, formerly, to have been thought that no direction "could be given at the hearing upon further consideration, for "the computation of interest, where the question of interest had "not been reserved by the original decree; and not only may "the computation of simple interest be so directed, but, where "the Court finds large sums of money in the hands of an agent, "receiver or trustee, or personal representative, it may direct "balances from time to time in the hands of the accounting "party to be ascertained, and interest to be computed on them."

Daniel's 5th Edition by Perkins.

The following authorities are quoted in the text in its support:

"Pearse vs. Green, 1 J. & W. 135, 141, 144.

"Johnson vs. Pendergast, 28 Beav. 480.

"Davenport vs. Stafford, 14 Beav. 319.

"2 De G., M. & G. 901.

"As the practice of allowing rests and compound interest "against trustees see:

"Fay vs. Howe, 1 Prck. 527, (2nd Edition) 528, and cases "cited in note (1).

"Brynton vs. Dyer, 18 Prck. 1.

"Hughes vs. Smith, 2 Dana 253.

"Karr vs. Karr, 6 Dana 3.

"Hodge vs. Hawkins, 2 Dev. & Bat. 566.

"Ringgold vs. Ringgold 1 Haw. & Ga. 11.

"Harland's Accounts, 5 Rawle 323.

"Trustees, Executors, Guardians, &c., will, in cases of gross "delinquency, be charged with compound interest. See the "cases cited above, and 2 Kent 231, note, in which this subject "is considered and the cases cited.

"Diffenderffer vs. Winder, 3 Harr. & G. 311.

"2 Story Eq. Jur. 1277.

"Charlson vs. Depeyster, 1 Hopk. 424.

"Rogers vs. Rogers, 1 Hopk. 515.

"Douford vs. Douford, 12 Sumner's Ves. 1275, note (a).

"Evartson vs. Tappan, 5 Johnson's Chancery 497.

"Where a trustee has employed the trust money in trade and "refuses to account, he will be charged with compound interest. "See:

"Schieffelui vs. Stewart, 1 Johns. Ch. 620.

"McKnight vs. Walsh, 2 C. E. Green 137.

"Newton vs. Bennett, 1 Bro. C. C. (Perkin's End) 361, 362.

"Frey vs. Frey, 2 C. E. Green 71.

"Barney vs. Saunders, 16 How. 542.

"The Court has even gone the length of charging an account- "ing party with interest on the balance in his hands, on further "consideration, not only where there was no reservation of the "question of interest, by the original decree, but even where the "original bill did not pray that, he might be so charged, and "where the circumstances were such that a claim for interest "existed and was known to exist, at the time of the filing of the "bill."

"Turner vs. Turner, 1 J. & W. 39, 43.

"Pearse vs. Green, 1 J. & W. 135.

"Good vs. Blewitt, 1 J. & W. 142.

"Wilson vs. Metcalf, 1 Russ. 530, 533, 537.

"Hollingsworth vs. Shakehaft, 14 Bear. 492.

"Stafford vs. Fiddon, 23 Bear. 386.

"Johnson vs. Pendergast, 28 Bear. 480.

"Fry vs. Fry, 10 Jur. N. S. 983.

In Fonblanque's Equity, B. 5, Ch. 1, Sec. 3, a very elaborate dissertation on interest, it is said: "As to the time when the "interest shall commence, it seems regularly to begin from the "delay of payment," * * * "but those who retain money

"in their hands and convert it to their own use, without the con-"sent of the owners, are bound to pay interest, although it be "not demanded, as a punishment for their knavish dealing."

Domat's Civil Law, Vol. 1, B. 3, Tit. 5 Sec. 8.

"Courts of Equity proceed upon this principle in ch rging "executors and trustees with interest on trust property."

Chancellor Kent states the rule, Vol. 2, p. 231, to be that the trustee who converts the trust money to his own use, will be condemned to pay conpound interest with rest every six months.

2nd.

Let us turn to Louisiana law and see if it is different from the doctrine laid down in the Chancery Books, which govern the exercise of the jurisdiction of this Court.

C. C. 1938 and R. S., Sec. 1883, "All debts shall bear interest "at the rate of five per cent per annum from the time they be-"came due, unless otherwise stipulated."

C. C. 2924: "Interest is either legal or conventional. Legal "interest is fixed at the following rates, to-wit: At five per "cent per annum on all sums which are the object of a judicial "demand, whence it is called judicial interest."

C. P. 554: "Interest at the rate of five per cent shall be "allowed on all debts from the time they become due, unless "otherwise stipulated."

Tested by these rules the money received by the City of New Orleans, prior to 1881, January 24th, had already been due a considerable time. Mr. Aikens, the city's expert, whose report is made part of the Master's report, stopped his investigation on the 24th of January, 1881. At that date the amount which the City had received from the school taxes amounted to $71,-139.60; this sum was the accumulation of all the collections from 1871, not accounted for, up to 1881.

The City had no right to use these funds, and it is admitted that she used the same as soon as collected.

Under our Civil Code we might consider the City of New Orleans as the agent of the School Board to collect and pay over the said school taxes. In fact, the Supreme Court of Louisiana, in Labatt vs. New Orleans, 38 A. 287, said: "Hence it is ob-"vious that under the provisions of Act 123 of 1874, as well as "under the effect of Sec. 10 of Act 36 of 1873, the holders of "school certificates can look only to the uncollected appropriation "of the respective years for which the same have been issued. "This shows the fullest extent of plaintiff's claim against the "City of New Orleans, which is simply a collecting agent, owing "no other account to the State or to any other authority, beyond "an effort to collect, and a payment of the amount collected."

If this be the status which the City occupies, i. e., a collecting agent, then we turn again to our Civil Code and read a special article under the title of mandate:

"C. C. 3015: The attorney is answerable for the interest of "any sum of money he has employed to his own use, from the "time he has so employed it, and that for any sum remaining in "his hands from the day he becomes a defaulter by delaying to "pay it over."

Tested by the above rule, there is no doubt that interest was due from the 24th of January, 1881, when the City had already used the funds for her own use.

Are the rules of law binding on the City of New Orleans?

The authorities quoted in the first part of the brief consider a corporation the same as an individual.

The city charter provides that New Orleans can sue and be sued (1896, p. 47) putting her on a level with other natural persons and subjecting her to the same rules of decisions.

As to matters of contract, the Circuit Court for the Eastern District of La. has rendered judgments against the City of New Orleans in many cases, some of which are as follows:

C. H. Stewart vs. the City of New Orleans, 11,626 Circuit Court for the Eastern District of Louisiana. In this case the

suit was based on certificates payable to bearer, which carried on their face a waiver of interest. Nevertheless, when plaintiff alleged and proved at law that the funds out of which he was to be paid had been diverted, the Court rendered a decree with full interest.

W. O. Johnson vs. City of New Orleans, No. 12,669 Circuit Court for the Eastern District of Louisiana. In this case interest is allowed since 1887.

In Creole Steam Fire Engine Co. vs. City of New Orleans, 39 A. 981, suit was brought on certificates payable to bearer, carrying a waiver of interest, yet interest was allowed, from judicial demand. In that case the Court said: "The record "does not disclose the reasons of the Judge a quo for his judg- "ment, and the only one assigned by plaintiff's counsel is the "provision of law that debts bear interest from the time when "they are due. Even if debts payable only out of particular "revenues, when collected, fell under this provision, in absence "of proof that the revenues applicable are in the treasury and "demand for payment out of same has been made, the provision "can, in no event, apply to this case, where the evidences of "obligation declared upon expressly exclude interest." Yet the Court allowed interest from judicial demand.

In Fernandez vs. the City of New Orleans, 42 A. 3, the Supreme Court says: "Had there been funds and had the City re- "fused, there would have been a delinquency, and as a penalty "for failing to perform her obligation, the City would have been "liable for judicial interest to the plaintiff, for damages."

In Barber Asphalt Co. vs. City of New Orleans, 43 A. 474, the money was not in the treasury, yet the Court allowed interest from judicial demand.

In all the above cases, however, the City was sued as a delinquent obligee, and the decisions are not as strong against the City as the present case, which is one of trust, one of agency.

The Civil Code expressly says that the agent owes interest when he employs any sum to his own use.

Therefore, if the City be an agent, as the Supreme Court said in the Labatt case, the judgment is correct in allowing interest. 38 A. 283.

If the case be tested by the rules of Equity Jurisprudence, the City has been guilty of a "knavish conduct" when she took the money and concealed the fact, and she owes the interest.

If this case be tested by the Louisiana law, purely and simply, she owes the interest.

Under the Criminal Laws such conduct on the part of a natural person would be considered embezzlement.

Complainant has a right to claim compound interest, and he leaves this Honorable Court to pass on the quantum to be allowed.

Your Honor's attention is called, for a moment, to the fact that when it was apparent to the City of New Orleans that the funds which she acknowledged, as accruing to the school taxes were entirely inadequate to pay the school warrants or certificates in full, yet she received certificates to the extent of $69,991.99 for their full face value, in payment of school taxes.

The maxim of Equity "Equality is Equity" was being violated by the City to the detriment of the other certificate holders.

If this sum of Sixty-Nine Thousand Nine Hundred and Ninety-one dollars were added to the present fund, it would materially increase the dividend of people who have been despoiled and who had to resort to all the resources of the law to obtain partial justice.

The lower Judge had simply followed both Equity Law and the Louisiana Code, when he allowed interest in the judgment, on the amount collected and received.

VII.

A complaint is made in this Court that Mrs. Fisher and her husband had acquiesced in the judgment which allowed no in-

terest on the money received by the City for the schools, and therefore had no right to take a cross appeal.

The answer to this complaint is:

1st. That the cross appeal was tried without objection by the City, and it is too late to urge this objection;

2nd. That the objection not having been urged in the Circuit Court of Appeals, cannot be heard here.

3rd. That there is no evidence before this Court and none can be offered to prove the acquiescence. This Court does not receive evidence in the first instance.

4th. The jurisprudence as settled by this Hon. Court is that: "In no instance with our knowledge has an appeal or writ of error been dismissed on the assumption that a release of errors was implied from the fact that money or property had changed hands by the force of the judgment or decree. If the judgment is reversed, it is the duty of the Court to restore the parties to their rights." 7 How. 184, Erwin vs. Lowry.

"Partial satisfaction of a judgment, whether obtained by a levy or voluntary payment, is not and never was a bar to a writ of error, where it appeared that the levy was made, or the payment was received prior to the service of the writ, and there is no well-considered case which affords the slightest support to any such proposition." 3 Wall. 702, United States vs. Dashiel.

The same doctrine was held in 107 U. S. 8, Embry vs. Palmer, quoting the above case.

So also, 93 U. S. 154, O'Hara vs. McConnell, re affirming 7 How. 184, Erwin vs. Lowry.

VIII.

Let us now resume the various points made:

I. A final judgment is rendered in favor of complainant against the School Board, by a Circuit Court of the United States, payable out of the school taxes levied by the City of New Orleans, prior to 1879. R. 52.

An account is demanded by the judgment creditor from the City and the School Board is made a party, it being averred that the latter refused to demand the account.

The matter is referred to a master, who accepts the figures given by the City's expert. No question of facts is at issue and judgment is sought only for the cash collected, with 5% interest per annum from the day when the expert closed the accounts.

II. The acts of the Legislature of Louisiana levying the special school tax are referred and printed in the addendum.

III. The exception filed to the Master's report by the City show that the City claimed as hers the interest accrued on the school taxes. Her contention was denied by the Court.

IV. The numerous defenses, none of which need to be specially referred to, show no merit, either in conscience or in law.

V. The question of jurisdiction of the Court may be summed up, in the fact that it is ancillary to the original case, without regard to the question of citizenship of the parties.

VI. The assignment of errors of the City present no new point. It is only notable that the School Board, who, according to the Supreme Court of Louisiana, administer school affairs without any possible control on the part of the city authorities, (R. 95), make no complaint.

VII. The record shows the City of New Orleans to have been an unfaithful trustee, and whether she is judged under the principles of Equity Jurisprudence or under the Civil Law of Louisiana, she owes interest on the amounts received by her for account of the schools, from the time she used the money.

VIII. Under the jurisprudence of this Hon. Court there is no estoppel to an appeal by reason of an attempt on the part of complainant to collect a part of the decree in her favor.

Complainant and intervenors pray that the judgment of the Circuit Court of Appeals for the Fifth Circuit be affirmed with costs.

Respectfully submitted,

CHS. LOUQUE, Solicitor.

April 16, 1900.

ADDENDUM.

(No 8 of 1871.) An Act.

Entitled an Act to Amend an Act entitled An Act to Regulate Public Education in the State of Louisiana and City of New Orleans, and to raise a revenue for that purpose, approved March 16, 1870.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the State Board of Education shall, immediately upon the passage of this Act, appoint a Board of School Directors, consisting of at least five members for each parish of this State, excepting the parish of Orleans, to be composed when practicable, of persons residing in different parts of the parish, who shall hold their office two years from April first, eighteen hundred and seventy-one, or until their successors shall be duly appointed and qualified. And said Parish Boards shall perform all the duties, possess all the rights and privileges, and assume all the obligations of the Ward Boards of School Directors and the School Boards of all cities and towns in the State having a population of less than one thousand persons.

The treasurer of said Parish Board shall perform the duties of secretary, and be entitled to such compensation as the Parish Board may allow out of local or parish school funds, the same not to exceed one hundred dollars per year.

The parish board shall hold their regular meetings on the first Monday in January, April, July and October of each year; they shall convene, at their first regular meeting, on the call of any two of the appointed members, or of the Division Superintendent, and no such meeting shall be held to be legal, unless every member has been duly notified thereof. Special meetings may be held in the same manner. They shall, at their first meeting, organize by electing from their own number a president and a treasurer, who shall be secretary of the board; they shall perform all the duties now required of officers, and not in-

consistent with the provisions of this act. The treasurer of city, town and parish boards shall give bonds in an amount not less than five thousand dollars, the same to be approved by the parish or district judge and the recorder of the parish, and be recorded. Said bonds may, from time to time, be increased by order of the board, or of the district judge, or of the State Superintendent of Public Education, in proportion to the amount of school funds on hand. The board shall, from time to time, examine the treasurer's accounts and settle them.

Sec. 2. Be it further enacted, etc., That the State Board of Education shall immediately appoint a board of school directors for each incorporated town and city of the State (excepting the City of New Orleans) having one hundred or more inhabitants; such boards to number not less than three nor more than five members, who shall hold their office in the manner prescribed by the parish boards. They shall elect a president and treasurer, who shall be secretary of the board, and receive out of the local school fund a salary of not more than one hundred dollars per year. They shall perform such duties as are now required of those officers, and not inconsistent with this act. All incorporated towns or cities having less than one thousand inhabitants shall be provided for by the respective parish boards.

Sec. 3. Be it further enacted, etc., that the corporate authorities of the respective parishes, towns and cities for which boards shall be appointed (excepting the City of New Orleans, shall, once in each year, place upon their annual budget an amount of tax not to exceed two mills on the dollar, nor less than one mill, the same to be levied on the taxable property of the parishes, towns and cities aforesaid; and to be collected at the same time and in the same manner as other taxes, and paid over to the treasurers of said parish, town or city boards of school directors, to be used exclusively for the lease, purchase, building and furnishing of schoolhouses, or for land therefor, and for such other expenses as may be approved by the division superintendent.

Sec. 4. Be it further enacted, etc., that the parish board of school directors shall receive from the hands of parish and ward

boards, and of towns and cities having less than one thousand inhabitants, now organized, all funds and school records in their possession, and such funds shall be applied by the parish boards exclusively to the benefit of the said wards, towns, or cities, and when the electors have voted a tax for school purposes, the parish board shall receive and apply the proceeds to the exclusive benefit of the wards so voting, and of the said towns or cities. And all town and city boards now organized shall likewise turn over such school funds and records to their successors appointed under this act. The new board shall assume all obligations of previous boards superseded by them.

Sec. 5. Be it further enacted, etc., That in any parish, city, or town where a board of school directors fail to establish schools within sixty days after their appointment, or to perform such other duties as are required of them by law, the Division Superintendent for the division in which such delinquent boards are located, may establish schools, and perform as far as possible such other neglected duties, and warrant on the State Treasurer and the treasurers of such boards for the school funds of such parishes, cities and towns, and apply the same for the purposes and in the manner provided by law, each warrant to be approved by the president of the State Board of Education. The Division Superintendent shall act in such cases only until a local board can be found to perform the duties.

Sec. 6. Be it further enacted, etc., that the State Board of Education shall immediately, on the passage of this act, appoint a board of school directors for the City of New Orleans, composed of one member from each Representative District of the city. They shall be divided into three classes, and shall hold office for three years, except that in the case of the board first appointed one-third shall go out in one year, one-third in two years and the remainder at the expiration of three years; the State Board of Education to appoint three members each year after the appointment of the first board, and to fill all vacancies occurring. The board so appointed shall have control of the public schools in the city, and shall be a body corporate and politic. Said board shall employ a secretary at a salary of two

thousand dollars per year, payable on the warrant of the president out of such funds as come into the hands of the board.

Sec. 7. Be it further enacted, etc., That the Board of School Directors for the City of New Orleans shall immediately upon their organization, and also at the commencement of each year thereafter, ascertain the amount of funds necessary to carry on the schools under their charge for the current year, and report the same to the Board of Administrators of the City of New Orleans, who shall, at such time as they may deem necessary, levy the amount on the taxable property of the city, and direct the same to be collected in the manner and at the time by them deemed most desirable, but the time shall not exceed six months from the date of their notification of the amount required.

Sec. 8. Be it further enacted, etc., That the Administrator of Finance of the City of New Orleans shall perform the duties of treasurer of the Board of School Directors for the City of New Orleans as part of his official duties, and shall receive all monies collected for or appropriated to, the Parish of Orleans for school purposes; shall daily deposit the same in the Fiscal Agency of the city, and only pay them out by checks, on the order of the said Board of School Directors; and he shall be ex-officio, a member of the board.

Sec. 9. Be it further enacted, etc., That the division superintendent of the Sixth Division shall have a salary of four thousand ($4000) dollars per annum. He shall be allowed a secretary and one or more messengers, at an expense of not more than twenty-five hundred (2500) dollars per year, payable monthly out of the public school fund, on the warrant of the Division Superintendent of said Sixth Division. The Division Superintendents shall draw their salaries monthly and the State Superintendent quarterly, out of the public school fund, upon their own warrants, and the Division Superintendent shall be allowed an annual contingent fund of six hundred ($600) dollars from the date of their appointments, payable in the same manner.

Sec. 10. Be it further enacted, etc., That the State Superintendent of Public Education shall, quarterly, on the first Monday in March, June, September and December in each

year, apportion the funds raised among the several wards, cities and towns of the State, according to the number of children between the ages of six and twenty-one years within the same. The amount so apportioned shall be paid by the State Treasurer to the treasurers of the respective parish, city and town boards of school directors, upon warrant signed by the president and countersigned by the secretary thereof.

Sec. 11. Be it further enacted, etc., that all acts and parts of acts in conflict with this act are hereby repealed, and that this act shall take effect from and after its passage.

(No. 48 of 1871.) **An Act**

To amend an act entitled, "An act to extend the limits of the Parish of Orleans," etc., approved March 16, 1870, and to prescribe additional regulations for the government of the corporation of the City of New Orleans.

Sec. 9. Be it further enacted, etc., That section twenty-first of said act be amended and re-enacted to read as follows: That all taxes imposed by the City of New Orleans or due to the same and not paid on the thirty-first day of July of each year, shall be exigible with interest at the rate of ten per cent. per annum from that date upon thirty (30) days' notice by the Administrator of Finance (during which delay there shall be three publications in the official journal), in such district courts of the Parish of Orleans as may be designated by the Administrator of Finance, under the direction of the council. And the only process necessary for judgment upon such claims or bills for taxes shall be said publication. Upon the production and filing of said claims or bills, in the appropriate and competent court and the production of proof of publication, judgment shall be immediately rendered in favor of said city, and against the delinquent taxpayer or debtor. It shall be the duty of the Administrator of the Department of Finance to file said bills and proof of publication in the appropriate court immediately after said publication, and to superintend said proceedings under the advice of the City Attorney, and collect the proceeds of the

judgment and writ in the hands of the clerk or sheriff. The clerk of said courts shall be allowed and permitted to charge two dollars for all proceedings had, including judgment and execution in each case filed.

(No. 36 of 1873.) **An Act**

To provide Additional Regulations for the Board of School Directors of the City of New Orleans; to Provide a permanent Revenue for said Schools; to prevent Litigation against the School Fund; to Fund the School Debt; to Regulate the Employment of Teachers, and to direct the Council of the City of New Orleans to levy a School Tax, and perform other duties in connection with the Public Schools.

Sec. 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, that the Board of School Directors for the City of New Orleans shall be in future composed of twenty directors, to-wit: one from each representative district, as at present constituted, and one additional director for each municipal district, the Administrator of Finance for the City of New Orleans, who shall be ex-officio a member, and the Superintendent of the Sixth Division, who shall be ex-officio a member, with the right to speak but not vote in the board. The State Board of Education shall appoint the directors from the municipal districts as soon as practicable after the passage of this act, so that two shall retire annually, the said State Board to determine by lot the succession of their retirement. They shall require the said director to possess the qualifications of an elector in the City of New Orleans and the necessary fitness and capacity for the office, and each new director, before taking his seat, shall take the oath of office prescribed for State officers.

Sec. 2. Bt it further enacted, etc., that as soon as practicable after the passage of this act the Board of Directors for the City of New Orleans shall adopt an estimate of debt and expenditures for the year 1873, and thereafter, during the month (of) October in each year the board shall in like manner adopt and

communicate to the Council of the City of New Orleans an estimate for the year commencing on the first of January next ensuing.

Sec. 3. Be it further enacted, etc., that it shall be the duty of the City of New Orleans to keep in good repair, through the proper department, all school houses, fences, grounds and apartment buildings belonging to the city, and the Council shall see the proper carrying out of this requirement, and make due provision therefor in the budget of current city expenses as a part thereof.

Sec. 4. Be it further enacted, etc., that the Council, after receiving the estimate required in this act for the year 1873, or subsequent years, shall proceed to make provision for the support of public schools in addition to those required in section three of this act, to be made for the preservation of city property. For the purpose of such support it shall levy a tax not less than one-fourth of one per cent. on the taxable valuation of all property in the City of New Orleans, and no provision in any general or special law limiting the aggregate power of taxation of the City of New Orleans, or of the Council, shall prevent the levying of at least one-quarter of one per cent. per annum for school purposes. The tax herein required to be levied for the year 1873 shall be in addition to the taxes levied by the Council in the month of Dec., 1872, and collectible therewith.

Sec. 5. Be it further enacted, etc., that the revenues of the school board for its necessary expenses, and the uses and purposes of the public schools, shall be as follows: The proceeds of the tax of twenty-eight cents on the one hundred dollars levied by the Council of the City of New Orleans for 1872, the annual taxes levied in accordance with this act, the pro rata of State school tax distributed according to sections thirty-four of Act No. 6 of extra session of 1870, any donations, bequests, fines or poll tax received for or accruing to the school fund, and such sum or amount as the City Council may appropriate out of the general funds upon the annual budget, which is hereby authorized, although the same may be raised as a part of the tax for current city expenses; and such sums, if any, as may be

raised upon a vote of the qualified electors authorizing taxation beyond or exceeding the limits laid down by law for taxation not authorized by such election; provided, that appropriations for purchasing landed property or erecting buildings may at the option of the Council making the same, be expended under its control; and provided further, that property and buildings purchased or erected by the school board shall be the property of the City of New Orleans, and only alienable by the consent of the Council, and shall not be subject to seizure for any debt.

Sec. 6. Be it further enacted, etc., that for the purpose of relieving the public schools of the City of New Orleans from pressure of debt, the Council of the City New Orleans is hereby directed to issue new consolidated bonds, general series, at the rate for said bonds of ninety cents on the dollar in favor of all holders of warrants of the school board for the debts for the year 1871 and 1872, who may desire and demand the same. On the delivery of such warrants to the Administrator of Public Accounts of the City of New Orleans, he shall issue his warrant on the Administrator of Finance for the delivery of bonds accordingly.

Sec. 7. Be it further enacted, etc., that no warrant or certificate of any kind shall be hereafter receivable for any school tax, but the school tax shall be payable in cash only; and the Administrator of Finance shall pay out the cash received for the tax of 1872 for the oldest warrants outstanding of 1871 or 1872, so that no warrants of any month shall be paid until those outstanding of previous months are paid or fully provided for, and the cash hereafter received from the State and from other sources, including the school tax of 1873, shall be appropriated for the expenses of each month in turn, beginning January 1, 1873, and no writ of fieri facias or of mandamus shall lie for the seizure of any school moneys in the fiscal agency or treasury of the City of New Orleans or of the school board, or to direct or enforce its paying out, otherwise than in the manner and sequence required by this act.

Sec. 8. Be it further enacted, etc., that the teachers and employes of the Board of Directors of the Public Schools of the

City of New Orleans shall be appointed by said board at such rate of annual salary as may be fixed, and to continue until otherwise ordered by the board; but no annual salary shall be construed as giving a fixed time of employment; and the board may at any time vacate any position by notifying the incumbent thereof. But no school officer, director or committee shall be empowered to remove any teacher, and no position or appointment shall be vacated except by the board at any meeting of the same. And no suit or action shall lie against the Board of School Directors, or against the schol moneys or revenues for the payment of any discharged officer or teacher, the school fund being held sacred for the actual current expenses of the schools. The pay of the regular incumbent, in case of absence from any cause shall be allowed pro rata for actual days employed to the supernumerary or other person temporarily acting. In all suits by or against the Board of Directors of the Public Schools of the City of New Orleans, or by or against the president of the board, or the Administrator of Finance of the city, involving the disposition of moneys raised or to be raised for school purposes, in case the said board, president or Administrator of Finance shall have occasion to appeal, sue out injunction or take other proceedings in which ordinary parties would be required to give bond and security, such bond and security shall be dispensed with.

Sec. 9. Be it further enacted, etc., that there shall be appointed by the Board of Schools Directors a committee on teachers, who shall examine applicants for employment as teachers. The Superintendent of the Sixth Division shall be required to attend and assist at all the examination of said committee. They shall keep a record of the examination of candidates for teachers of all district (intermediate or primary) schools, and such examination in branches of teaching in which they may be practicable, shall be in writing. The original papers shall be preserved, and a figure or estimate affixed to each study, whether the examination therein be written or oral. The aggregate percentage or estimate for each candidate shall be test of proficiency, and the list of candidates shall be preserved for the selec-

tion of teachers by the board, which shall be bound to select for each and any future vacancy from the twenty names standing highest on the list; provided, the committee on teachers shall strike from the list all persons removing from the city, or resigning or declining to be further considered as candidates, and may for cause or reason rendering unfit the employment of the candidate, notwithstanding proficiency, remove his or her name therefrom, and no name shall be stricken from the list by the committee on teachers only as provided for in this act, in case of dismissal of teachers. Teachers in the schools who shall have been examined by the committee or the State Superintendent, and whose percentage or estimate shall place them in the list of candidates to be selected from, shall be duly considered for promotion in all cases of vacancy; and further provided, that nothing in this section shall be construed to prohibit the State Superintendent of Education from issuing to teachers State certificates of qualification.

Sec. 10. Be it further enacted, etc., that the Board of Directors of the Public Schools shall not be empowered to make contracts or debts for the year 1873, or any subsequent year, greater than the amount of the revenue provided for according to this act, or other school laws existing, it being the intent hereof that parties contracting with said board shall take heed that due revenue shall have been provided to satisfy the claims, otherwise they shall lose and forfeit the same, and no action or execution shall be allowed in aid thereof, and that the board shall not exceed its powers in the incurring of debt.

Sec. 11. Be it further enacted, etc., that this act shall take effect from and after its passage, and all laws or parts of laws conflicting therewith be repealed as far as they so conflict.

(No. 41 of 1874.) An Act

To provide the time for the payment and collection of taxes due the City of New Orleans, and to authorize a discount on the same in certain cases.

Sec. 1. Be it enacted by the Senate and House of Represen-

tatives of the State of Louisiana in General Assembly convened, that hereafter and including the taxes for 1874, taxes imposed by the City of New Orleans shall be payable from January 1st to March 31, and shall be exigible from and after the thirty-first day of March in each year.

Sec. 2. Be it further enacted, etc., that the administrators of said city may in their discretion and under such regulations as they may make, grant a rebate or discount on taxes paid in full prior to the twentieth day of a March in each, including the present year; provided, no discount shall be made upon school tax.

Sec. 3. Be it further enacted, etc., that this act shall take effect from and after its passage, and all laws in conflict are repealed.

(No. 49 of 1880.) An Act

Ordering or requiring parish or municipal corporations in the State to receive for taxes or licenses due any parish or municipal corporation prior to January 1, 1879, all valid warrants, scrip or evidence of indebtedness of said parish or municipal corporations.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, that all parish or municipal corporations in this State shall receive for all taxes and licenses due said parish or municipal corporations prior to January 1, 1879, all valid warrants, scrip or evidences of indebtedness of said parish or municipal corporations, except judgments, without any discrimination as to what years said warrants, scrip or evidences or indebtedness shall have been issued; provided, that all valid metropolitan police warrants or scrip for the years 1874, 1875 and 1876 shall be receivable only for that portion of the tax levied for the metropolitan police fund and no other, without any discrimination as to the year in which said warrants were issued or taxes levied, and that all school certificates issued according to law, by any school board shall be receivable for any taxes due any parish or municipality only for that portion to

the school tax due by said parish or municipality. The true intent or meaning of this act being to allow the delinquent tax payers to pay their indebtedness of any year with any kind of valid obligations issued or emitted by any such parish or municipal corporation in this State, with the restrictions above provided, without any discrimination as to the year in which said warrants, scrip or other evidences of indebtedness were issued or the debt contracted; provided, however, that no warrant, scrip or other evidence of indebtedness of any parochial or municipal corporation shall be receivable for any tax or license unless the same shall, after the passage of this act, have first been examined by the police jury of the parish or the municipal authority of the town or city owing the indebtedness, and found valid, and indorsed by them as such; and it shall be the duty of said police juries and municipal authorities throughout the State to pass on the validity of said scrip and other evidences of indebtedness immediately upon the presentation of the same to them; provided, no right to plead prescription shall hereby be waived; and provided further, that all warrants and certificates condemned by the police jury or municipal corporation shall be so stamped.

Sec. 2. Be it further enacted, etc., that all laws or parts of laws contrary to the provisions of this act are hereby repealed.

Constitution of Louisiana, 1879.
Miscellaneous Ordinances.
Relief of Delinquent Taxpayers.

Be it further ordained, that all taxes and licenses due any parish or municipal corporation prior to January 1, 1879, may be payable in any valid warrants, scrip or floating indebtedness of said parish or municipal corporation, except judgments.